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Testimony on Drug Treatment Alternatives to Incarceration

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Testimony Before the House Committee on Government Reform
Subcommittee on Criminal Justice, Drug Policy, and Human Resources

Tuesday, April 4, 2000

Martin Y. Iguchi

Thank you for the opportunity to testify. My name is Martin Iguchi. I am a Senior Behavioral Scientist and Co-Director of the Drug Policy Research Center at RAND. While this statement is based on research conducted at RAND, the opinions and conclusions are mine and should not be interpreted as representing those of RAND or any of the agencies or others sponsoring its research. I ask that my full written statement be entered into the record.

I am pleased to have this opportunity to comment on the use of treatment as an alternative to incarceration because I believe that drug courts and other diversion alternatives are exciting and valuable innovations in the criminal justice system. My colleagues and I have had an opportunity to study these relatively new phenomena, and while I may be counted as a supporter of such courts, I do have a few comments about problems that may arise in implementation.

Over the past several decades, lawmakers in the United States have responded to the drug epidemic with tougher laws and longer sentences in an attempt to deter drug use. The resulting increase in drug cases has seriously overloaded judicial dockets creating a need for reasoned alternatives. In 1992, the Drug Policy Research Center conducted a drug policy seminar game involving Florida public officials that anticipated this increase in cases as well as the need to provide drug abuse treatment within the criminal justice system.

Players in that policy game focused, as we are doing today, on the need to provide criminal offenders with drug abuse treatment as an alternative to incarceration. This emphasis was consistent with our drug policy modeling work that indicated treatment may well be a more cost-effective way to spend additional funds intended to reduce cocaine use than other options, such as domestic enforcement, interdiction, or source country control¹.

However, as the drug policy game progressed, players came to realize that they had focused exclusively on the benefits of treatment as an alternative to incarceration with no thought given to possible negative outcomes associated with the approach in a larger context. Specifically, they came to realize that, given the limited availability of treatment slots for those individuals who are convicted of crimes and those who are not, they had inadvertently created a policy that could be characterized as, "Use a gun, get a treatment slot."²

Now, I don't mean to overstate the negatives here, as it is clear that many communities (such as Brooklyn, New York) have been able to implement drug courts without overburdening their drug treatment system. I do want to raise the issue, however, that we need to be certain that sufficient treatment capacity exists to support the increase in demand for drug treatment. We do not want someone who is voluntarily seeking treatment to be deprived of that opportunity because the slot has been filled with an individual mandated to receive treatment.

¹ See Rydell, C. Peter, and Susan S. Everingham, *Controlling Cocaine: Supply Versus Demand Programs*, Santa Monica, Calif.: RAND, MR-331-ONDCP/A/DPRC, 1994.

² See Kahan, James P., John Setear, Margaret M. Bitzinger, Sinclair B. Coleman, and Joel Feinlab, *Developing Games of Local Drug Policy*, Santa Monica, Calif.: RAND, N-3395-DPRC, 1992.

To highlight how damaging such a scenario might be, I offer a short anecdote. A colleague of mine runs a drug education, outreach, and intervention program in South Central Los Angeles. This colleague spends a great deal of time educating young men and women about the dangers of drug use and the advantages of abstinence. Recently, after multiple interactions, he finally convinced two young men to consider treatment for their drug use problem. Unfortunately, my colleague was unable to locate a treatment program with available slots for the two young men. The only publicly funded treatment slots available were set aside for juvenile probationers. This scenario is a tragic one. We need to be certain that we expand treatment in parallel with the development of drug courts so that every person who wants drug treatment can find it.

On a second and related issue, not all who participate in drug courts are screened to determine if they meet the diagnostic criteria for drug dependence. While this statement does not apply to resource-rich programs, such as the Brooklyn Drug Treatment Alternative to Prison program (DTAP), many programs are not as discriminating. This means that many individuals are sent to drug treatment who do not require it, putting additional pressure on an often overburdened system of care.

My third comment has to do with the question, "Who should run the drug courts – prosecutors or judges?" A number of drug courts are operated by the prosecutors' office rather than by judges. While I do not question the integrity of prosecuting attorneys, some public defenders and defense attorneys have voiced concern that prosecutors may be tempted to offer access to drug court only to those individuals who are "cooperative." Although the functional and daily operational characteristics of prosecutor courts appear identical to those of drug courts run by judges, I want to provide a word of caution about the importance of

avoiding perceptions of undo pressure. For that reason, it seems reasonable that judges, not prosecutors, should be in charge of drug courts.

Finally, I want to say that I have been most impressed by the dedicated and enthusiastic efforts put forward by those involved in both the judicial and treatment communities to make drug courts work around the country. While drug courts are clearly responsible for relieving the pressures of overcrowded court dockets, the daily workloads of everyone involved in drug courts has actually increased. So what leads these dedicated professionals to give so much more of themselves for drug courts? The answer from all involved in drug courts appears to be that the idea of restorative justice or therapeutic jurisprudence is a hopeful one in a context that breeds cynicism.

I attended a drug court graduation ceremony in Rancho Cucamonga, California, this month and had a conversation with the court magistrate. He stated that he looks forward to ending his week with drug court every Friday evening. He elaborated that during his normal workday he is faced with doing unpleasant things to people who have engaged in bad behavior. But on Friday evening, he sees hope and the possibility of rehabilitation. He concluded, "It's definitely worth the extra work."

Thank you for your attention to this important matter.